



REVIEW REPORT 098-2015

Saskatchewan Government Insurance

September 1, 2015

Summary: The Applicant requested records from Saskatchewan Government Insurance (SGI) related to her deceased son's auto claim file. SGI provided partial access to the records but withheld portions pursuant to subsections 15(1)(d), 17(1)(b)(i), 18(1)(f) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). Upon review, the Commissioner found that SGI appropriately applied subsections 17(1)(b)(i), 29(1) and 18(1)(f) of FOIP to some of the information in the records and recommended that SGI continue to withhold it. The Commissioner also found that SGI did not apply subsection 29(1) of FOIP appropriately to other information and recommended that this information be released.

I BACKGROUND

[1] On July 15, 2014, Saskatchewan Government Insurance (SGI) received an access to information request from the Applicant for:

...so what I really need is the evidence proving my son made false statements. Also he was taking pain killers for his back.

[2] SGI responded to the request by a letter dated August 8, 2014, indicating that access was partially granted. SGI advised the Applicant that portions of the record were being withheld pursuant to subsections 15(1)(d), 17(1)(b)(i), 18(1)(f) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

[3] On May 4, 2015, my office received a Request for Review from the Applicant. The Applicant indicated that her son had been charged with arson for setting his car on fire but the charges were later dropped. Her son made a claim to SGI however he passed away before the claim could be concluded. Following his death, SGI denied the claim. The Applicant became administrator of her son's estate and made an access to information request to SGI because she felt the denial of the claim was unfounded.

[4] My office notified SGI and the Applicant of our intention to undertake a review on May 12, 2015. My office invited both parties to provide a submission. In addition, we requested SGI provide us with a copy of the withheld record in question. On May 27, 2015, SGI provided its submission and the record. A submission was received from the Applicant on May 24, 2015.

II RECORDS AT ISSUE

[5] The record at issue is 35 pages consisting of various types of file documents including Auto Claim Summary Sheets, letters, emails and handwritten notes.

III DISCUSSION OF THE ISSUES

[6] SGI is a "government institution" pursuant to subsection 2(1)(d)(ii) of FOIP.

1. Did SGI properly apply subsection 29(1) of FOIP to the withheld record in question?

[7] SGI applied subsection 29(1) of FOIP to 28 pages of the record. SGI severed what it determined was personal information and released the remainder of the pages.

[8] When dealing with information in a record that appears to be personal information, the first step is to confirm the information indeed qualifies as personal information pursuant to section 24 of FOIP. Once identified as personal information, a decision needs to be made as to whether to release it or not pursuant to section 29 of FOIP which provides:

29(1) No government institution shall disclose personal information in its possession or under its control without the consent, given in the prescribed manner, of the individual to whom the information relates except in accordance with this section or section 30.

[9] Subsection 24(1) of FOIP provides a list of what constitutes personal information. However, this list is not exhaustive. Other types of information can also constitute personal information provided the information is about an identifiable individual and it is personal in nature.

[10] On pages P013, P088 and P104, SGI severed a cell phone number for an RCMP Corporal. In its submission, SGI advised that it was unable to determine whether this was a personal cell number or a business cell number. Therefore, it elected not to release it. Subsection 24(1)(e) of FOIP provides that:

24(1) Subject to subsections (1.1) and (2), “**personal information**” means personal information about an identifiable individual that is recorded in any form, and includes:

...

(e) the home or business address, home or business telephone number or fingerprints of the individual;

[11] If this is a personal cell phone number I recommend it be withheld pursuant to subsection 24(1)(e) of FOIP. If it is a business cell phone number we recommend it be released. This addresses pages P013 and P104. However, page P088 has other information severed pursuant to subsection 29(1) of FOIP.

[12] On pages P015, P070, P073, P074, P080, P081, P088, P094, P106, P114, P115 and P116 SGI severed personal information of the Applicant’s son which it asserted is not related to the claims adjudication. As such, SGI severed the information pursuant to subsection 29(1) of FOIP and section 30. Section 30 provides:

30(1) Subject to subsection (2) and to any other Act, the personal information of a deceased individual shall not be disclosed until 25 years after the death of the individual.

(2) Where, in the opinion of the head, disclosure of the personal information of a deceased individual to the individual's next of kin would not constitute an unreasonable invasion of privacy, the head may disclose that personal information before 25 years have elapsed after the individual's death.

[13] It is necessary to determine whether subsection 59(a) of FOIP has any relevance in this case. Subsection 59(a) provides:

59 Any right or power conferred on an individual by this Act may be exercised:

(a) where the individual is deceased, by the individual's personal representative if the exercise of the right or power relates to the administration of the individual's estate;

...

[14] A *personal representative* would be someone appointed by the court as Executor or Executrix or Administrator of an estate.

[15] The Applicant provided my office with proof that she had been appointed Administrator of her son's estate. As such, she would qualify as the personal representative of her son for purposes of subsection 59(a) of FOIP.

[16] Subsection 59(a) of FOIP provides that in order for the personal representative to access the personal information of the individual it must relate to the administration of the individual's estate. *Administration of an estate* means the management and settlement of the estate of a deceased, including selling, collecting and liquidating assets, paying debts, and making claims for funds owing or exercising any right of a financial benefit of the deceased.

[17] The Applicant's submission does not address how access to this information is related to handling her son's estate. However, it is clear that the Applicant wishes to challenge SGI's decision to deny her son's claim. I find that the information relates to the administration of her son's estate because the information appears in records related to the adjudication of the claim and were considered in the decision-making process. To only provide portions to the Applicant now, would appear unfair.

[18] Therefore, I recommend SGI release the information withheld on pages P015, P070, P073, P074, P080, P081, P088, P094, P106, P114, P115 and P116. The exception is the personal information of other individuals on page P080. This should continue to be withheld.

[19] On pages P058, P075, P082, P083, P084, P091 P092, P110 and P111, SGI severed the names, addresses, customer numbers, dates of birth and previous places of employment of other individuals who are not the Applicant's son. This information constitutes the personal information of these individuals pursuant to subsections 24(1)(a), (d), (e) and (k)(i) of FOIP which provides:

24(1) Subject to subsections (1.1) and (2), "**personal information**" means personal information about an identifiable individual that is recorded in any form, and includes:

(a) information that relates to the race, creed, religion, colour, sex, sexual orientation, family status or marital status, disability, age, nationality, ancestry or place of origin of the individual;

(b) information that relates to the education or the criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;

...

(d) any identifying number, symbol or other particular assigned to the individual, other than the individual's health services number as defined in *The Health Information Protection Act*;

(e) the home or business address, home or business telephone number or fingerprints of the individual;

...

(k) the name of the individual where:

(i) it appears with other personal information that relates to the individual;

[20] As the information is personal information of other individual's, it should continue to be withheld pursuant to subsection 29(1) of FOIP.

2. Did SGI properly apply subsection 17(1)(b)(i) of FOIP to the withheld record in question?

[21] Subsection 17(1)(b)(i) of FOIP is a discretionary exemption and provides:

17(1) Subject to subsection (2), a head may refuse to give access to a record that could reasonably be expected to disclose:

...

(b) consultations or deliberations involving:

(i) officers or employees of a government institution;

...

[22] This provision is meant to permit government institutions to consider options and act without constant public scrutiny.

[23] SGI asserted in its submission that the records contained *consultations*. A *consultation* occurs when the views of one or more officers or employees of the public body are sought as to the appropriateness of a particular proposal or suggested action.

[24] In order to qualify, the opinions solicited during a “consultation” must:

- i. be either sought, expected, or be part of the responsibility of the person who prepared the record; and
- ii. be prepared for the purpose of doing something, such as taking an action, making a decision or a choice.

[25] SGI applied subsection 17(1)(b)(i) of FOIP to portions of two remaining pages of the record (P007 and P049). From a review of the records they constitute an Auto Claim Summary Sheet and an Adjuster’s Request for Denial of Coverage sheet. In its submission, SGI explained the nature of the two documents and the consultations occurring in them. In addition, it clarified the roles of the employees involved.

[26] From a review of the documents, it is clear that there are discussions going back and forth between SGI employees including those responsible for making decisions regarding the claim.

[27] I find that the information constitutes consultations. Further, I find that the purpose for the consultations was to make decisions regarding the claim. It was also part of the

responsibilities of the employees involved. Therefore, I find that SGI appropriately applied subsection 17(1)(b)(i) of FOIP to pages P007 and P049.

3. Did SGI properly apply subsection 18(1)(f) of FOIP to the withheld record in question?

[28] Subsection 18(1)(f) of FOIP is a discretionary exemption and provides:

18(1) A head may refuse to give access to a record that could reasonably be expected to disclose:

...

(f) information, the disclosure of which could reasonably be expected to prejudice the economic interest of the Government of Saskatchewan or a government institution;

[29] In order to qualify, the public body must show how the information is expected to prejudice economic interests. The public body does not have to prove that the prejudice is probable, but needs to show that there is a “reasonable expectation of prejudice” if any of the information/records were to be released.

[30] *Prejudice* in this context refers to detriment to economic interests. *Economic interest* refers to both the broad interests of a public body and for the government as a whole, in managing the production, distribution and consumption of goods and services. The term also covers financial matters such as the management of assets and liabilities by a public body and the public body’s ability to protect its own or the government’s interests in financial transactions.

[31] SGI severed information on pages P057 and P102 pursuant to subsection 18(1)(f) of FOIP. In its submission, it indicated that the information severed was reserve and benefit amounts. SGI argued that this information is not an accurate reflection of the actual value of the claim or the benefit amount and to release it would undermine SGI’s ability to negotiate fairly.

[32] I find that if released, the information would prejudice the economic interests of SGI. Therefore, SGI appropriately applied subsection 18(1)(f) of FOIP.

IV FINDINGS

[33] I find that SGI appropriately applied subsections 29(1), 17(1)(b)(i) and 18(1)(f) of FOIP to the record in question.

[34] I find that SGI did not appropriately apply subsection 29(1) of FOIP to some of the information in the record.

V RECOMMENDATIONS

[35] I recommend that SGI continue to withhold the information found to qualify for exemption pursuant to subsections 29(1), 17(1)(b)(i) and 18(1)(f) of FOIP.

[36] I recommend that SGI release the information found not to qualify for exemption pursuant to subsection 29(1) of FOIP.

Dated at Regina, in the Province of Saskatchewan, this 1st day of September, 2015.

Ronald J. Kruzeniski, Q.C.
Saskatchewan Information and Privacy
Commissioner